

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.8472 of 2018
Vijaya Khadke and Anr. Vs. State of Maharashtra & Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.R. Deshpande, Advocate for petitioner
Mrs. Mrunal Naik, AGP for respondents No.1 and 2.
Mr. J.M. Shamkuwar & S.D. Dongardive, Adv. for respondents No. 3 to 6.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 25, 2019

By this writ petition, the petitioners have challenged order passed by the Additional Commissioner, Amravati Division dated 03/12/2018, as also an earlier order dated 11/06/1997, passed by the Tahsildar, Chandur Bazar.

2. The proceedings leading to the said orders passed by the Tahsildar and Additional Commissioner, were initiated under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, in order to determine the surplus lands in the hands of the predecessors of the petitioners. The orders passed by the authorities under the provisions of the said Act, determining the extent of surplus land stood ultimately confirmed up to the Hon'ble Supreme Court. Thereafter, the Tahsildar undertook the exercise of identifying the lands that could be retained by the petitioners and those that were surplus, so

that possession could be taken by the State and allotted to the beneficiaries.

3. The Tahsildar passed order on 11/6/1997, identifying such lands. The Tahsildar purportedly acted as the Surplus Lands Determination Tribunal under the provisions of the said Act.

4. Thereafter, there were series of orders passed by the Maharashtra Revenue Tribunal, resulting in the proceedings being remanded to the Tahsildar. At this point, the petitioners submitted a letter / application before the Collector contending that appropriate orders be passed so that they were not left as landless. A revision proceeding was also initiated before the Additional Commissioner, under the provisions of the said Act, wherein the procedure undertaken by the Tahsildar regarding distribution of surplus land was challenged and an order was sought for quashing and setting aside the same.

5. By order dated 03/12/2018, the Additional Commissioner rejected the revision application of the petitioners, maintaining the order of Tahsildar and further directing that fresh choice of retention be given to the petitioners as legal heirs of the original owners. The directions given by the Additional Commissioner included a specific direction to the Tahsildar / Surplus Land Distribution Tribunal, Chandur Bazar, to call the petitioners within a period of one month to carry out the exercise

regarding fresh choice of retention of land as directed by this Court in the earlier proceedings.

6. The petitioners have challenged the order of the Tahsildar passed on 11/06/1997, as also the aforesaid order dated 03/12/2018, passed by the Additional Commissioner. The learned counsel appearing for the petitioners submitted that the order of Tahsildar itself was without jurisdiction and for this purpose he invited attention of this Court to Sections 2-A, 14, 44-A R/w Section 26 of the aforesaid Act. The contention raised on behalf of the petitioners was that the Tahsildar alone could not have passed order dated 11/06/1997, acting as the Tribunal under the provisions of the said Act. In this regard, reliance was placed on Section 2-A to contend that as per the said provision and Rules framed under the Act, as also the judgment of the Division Bench of this Court in the case of **Awadhoot Kisan Ambalkar and others Vs. State of Maharashtra and others** reported in 1997 Mh.L.J. 689, a minimum quorum of two persons including Tahsildar as the Chairman only could have passed the order. It was submitted that the proviso to Section 2-A(5) was held to be ultra vires in the said judgment, which provided that the Tahsildar as Chairman of the Tribunal alone was empowered to pass order. It was submitted that since in the present case, admittedly the order was passed by the Tahsildar alone, it was rendered without jurisdiction. It was further submitted that the Tribunals were admittedly abolished in the year 1981 itself and therefore, on a proper reading of

Section 2(6) and 44-A of the aforesaid Act, in the absence of the Tribunal, it was only the Collector who could have exercised power under the said Act, to consider the directions given by this Court in the earlier round of litigation regarding fresh choice to be exercised by the petitioners for retention of land. On this basis, it was contended that order dated 03/12/2018, passed by the Additional Commissioner was also liable to be set aside and the matter ought to be placed before the Collector under Section 2(6) of the said Act. The learned counsel placed reliance on the judgment of this Court in **Wrti Petition 474/2017, Smt. Nemibai wd/o late Badridasji Gandhi and others Vs. The State of Maharashtra and others, dated 31st October, 2018.**

7. The learned counsel appearing for the respondents No.3 to 6, alleged allottees of lands pursuant to proceedings initiated under the provisions of the said Act, contended that pursuant to order dated 03/12/2018 passed by the Additional Commissioner, the Tahsildar had already passed order on 21/12/2018. It was submitted that since the said order was holding the field, the petitioners ought to have challenged the same before the Maharashtra Revenue Tribunal and that, therefore, this writ petition ought not to be entertained. It was further submitted that the orders passed by the Tahsildar and the Additional Commissioner were only pertaining to the choice of lands to be retained by the petitioners and that, therefore, it was not necessary to go into the question of the power to be exercised by the

Surplus Lands Determination Tribunal, particularly, when the original proceedings had terminated against the petitioners and the same had attained finality up to the Hon'ble Supreme Court. On this basis, it was submitted that the writ petition deserved to be dismissed.

8. The learned AGP appeared on behalf of the respondents No.1, 2 and 7 and submitted that the orders passed by the Tahsildar and the Divisional Commissioner could not be said to be without jurisdiction as they were only in consequence of the original proceedings initiated against the predecessors of the petitioners under the provisions of the said Act.

9. Heard learned counsel for rival parties and perused material brought on record. The fundamental question that arises in the present petition is, as to whether the impugned orders passed by the Tahsildar and Additional Commissioner were sustainable, in the face of Sections 2-A, 44-A R/w Section 26 of the aforesaid Act. It needs to be examined as to whether the order passed by the Tahsildar on 11/6/1997, can be said to be without jurisdiction.

10. There is no dispute about the fact that the said order was passed by the Tahsildar alone acting as a Surplus Land Determination Tribunal, Chandur Bazar. A perusal of Section 2-A would show that a quorum of minimum two members of the Tribunal was provided under the Rules to consider any question before the Tribunal. Although, the

proviso to Section 2-A(5) of the Act provided that in the absence of quorum, the Chairman alone could proceed to pass order, the said provision was held to be ultra vires in the Division Bench judgment of this Court in the case of **Awadhoot Kisan Ambalkar and others Vs. State of Maharashtra and others** (supra). In this situation, as per the Rules, admittedly, quorum for constituting the Tribunal to be empowered to pass appropriate orders would be two members. Since, in the present case, the Tahsildar alone passed the order, the same was rendered without jurisdiction and hence unsustainable.

11. Even otherwise, this Court has taken judicial notice, in the case of **Smt. Nemibai wd/o Late Badridasji Gandhi and others Vs. The State of Maharashtra and others** (supra), about the fact that the Tribunal stood abolished in the year 1981 itself. This aspect was not noted either by the Tahsildar or Additional Commissioner while passing the impugned orders. A perusal of Section 44-A of the said Act would show that it is only when the Tribunal is constituted or reconstituted under Section 2-A of the said Act that the Collector is excluded from exercising powers under the provisions of the said Act. Since the Tribunals stood abolished in the year 1981, it was the Collector as defined in Section 2(6) of the said Act, who could have exercised jurisdiction under the provisions of the said Act, to consider fresh choice sought to be exercised by the petitioners pursuant to the directions in earlier round of litigation. On both these counts, the order of Tahsildar dated

11/06/1997, was rendered unsustainable. As a consequence, the subsequent proceedings before various authorities were also rendered meaningless. For the very same reason, the impugned order dated 03/12/2018, passed by the Additional Commissioner, is also rendered unsustainable, because the matter has been remanded to the Tahsildar treating the Tahsildar as the Surplus Land Determination Tribunal. Since the very basis of the order is taken away, on the aforementioned two grounds, this writ petition deserves to be allowed.

12. The emphasis placed by the learned counsel for the respondent No.3 on the order dated 21/12/2018, passed by the Tahsildar, is of no consequence for the short reason that the said order was passed in pursuance to impugned order dated 3/12/2018, which already stood stayed by this Court on 18/12/2018. Therefore, there is no substance in the specific contention raised on behalf of the learned counsel for the respondents that the petitioners herein were free to challenge order dated 21/12/2018, before the Maharashtra Revenue Tribunal and that this writ petition ought not to be entertained. In any case, since the very basis of the order passed by the Divisional Commissioner is taken away, the consequential order passed by the Tahsildar would be of no consequence.

14. At the same time, this Court is inclined to follow the directions given by the learned Division Bench of this Court in the case of **Smt. Nemibai wd/o Late Badridasji**

Gandhi and others Vs. The State of Maharashtra and others (supra), whereby the matter was assigned for enquiry and action under Section 2(6) of the aforesaid Act to Collector.

15. In view of the above, the writ petition is partly allowed. The impugned orders passed by the Tahsildar and Additional Commissioner are quashed and set aside and consequently, by exercising writ jurisdiction the subsequent order dated 21/12/2017, also passed by the Tahsildar, is also quashed and set aside. The respondent No.7 - Collector is directed to conduct enquiry into the proceedings initiated by the petitioners for fresh choice to be exercised under the provisions of the said Act, in pursuance of the earlier orders passed in the first round of litigation. Let the Collector take up the enquiry and complete the same within a period of six months from today.

16. The writ petition is partly allowed and disposed of in above terms.

JUDGE